

MONTANA LEGISLATIVE HISTORY

Chapter 449 19 82

Bill H _____ S 375

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) Mar 19 ☒ c

Mar 26 ☒ c

_____ ☐ c

_____ ☐ c

Date Out Mar 26 ☒ c

S. Committee on Judiciary

Hearing Date(s) Feb 20 ☒ c

_____ ☐ c

_____ ☐ c

_____ ☐ c

Feb 20 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE FINAL STATUS

3/26	TRANSMITTED TO GOVERNOR		
3/31	RETURNED WITH GOVERNOR'S AMENDMENTS		
4/02	2ND READING GOVERNOR'S AMENDMENTS		
	CONCURRED	50	0
4/03	3RD READING GOVERNOR'S AMENDMENTS		
	CONCURRED	49	0
	TRANSMITTED TO HOUSE		
4/10	2ND READING GOVERNOR'S AMENDMENTS		
	CONCURRED	88	5
4/11	3RD READING GOVERNOR'S AMENDMENTS		
	CONCURRED	83	6
	RETURNED TO SENATE		
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 567	EFFECTIVE DATE:	4/20/87

SB 375 INTRODUCED BY BISHOP
REVISE WRONGFUL DEATH ACTIONS
BY REQUEST OF SENATE JUDICIARY COMMITTEE

2/18	INTRODUCED		
2/18	REFERRED TO JUDICIARY		
2/20	HEARING		
2/20	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	50	0
2/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	REFERRED TO JUDICIARY		
3/19	HEARING		
3/27	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	77	0
3/30	3RD READING CONCURRED	97	1
	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	49	0
4/03	3RD READING AMENDMENTS CONCURRED	49	0
4/06	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 449	EFFECTIVE DATE:	7/01/87

SB 376 INTRODUCED BY JERGESON, BECK
USE ONLY ON-JOB DRIVING RECORDS FOR GOVERNMENTAL
ENTITY CAR LIABILITY INSURANCE

2/19	INTRODUCED		
2/19	REFERRED TO STATE ADMINISTRATION		
2/20	HEARING		
2/20	COMMITTEE REPORT--BILL PASSED		
2/23	2ND READING PASSED	31	15
2/25	3RD READING PASSED	34	15
	TRANSMITTED TO HOUSE		
3/03	REFERRED TO STATE ADMINISTRATION		
3/17	HEARING		

SENATE BILL NO. 375

INTRODUCED BY BISHOP

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

IN THE SENATE

FEBRUARY 18, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 21, 1987	PRINTING REPORT.
FEBRUARY 23, 1987	SECOND READING, DO PASS.
FEBRUARY 24, 1987	ENGROSSING REPORT.
FEBRUARY 25, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 97; NOES, 1.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1987	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 3, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 Senate BILL NO. 375
 2 INTRODUCED BY Bishop
 3 BY REQUEST OF THE SENATE JUDICIARY COMMITTEE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 6 LAWS RELATING TO CIVIL ACTIONS FOR THE WRONGFUL DEATH OF
 7 ANOTHER; REQUIRING THE JOINDER OF CIVIL ACTIONS FOR INJURIES
 8 TO AND DEATH OF A PERSON CAUSED BY THE WRONGFUL CONDUCT OF
 9 ANOTHER; PROVIDING THAT THERE MAY BE ONLY ONE LEGAL ACTION
 10 FOR SUCH INJURIES AND DEATH; PROVIDING THAT SUCH AN ACTION
 11 MAY BE BROUGHT ONLY BY THE PERSONAL REPRESENTATIVE OF THE
 12 DECEDENT'S ESTATE; ESTABLISHING THE COMPENSABLE ELEMENTS IN
 13 SUCH ACTIONS; AMENDING SECTIONS 27-1-323, 27-1-501,
 14 27-1-512, AND 27-1-513, MCA; AND PROVIDING AN APPLICABILITY
 15 DATE AND AN IMMEDIATE EFFECTIVE DATE."
 16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 27-1-323, MCA, is amended to read:

19 "27-1-323. Wrongful death. In every action under
 20 ~~27-1-512~~ and 27-1-513, such damages may be given as under
 21 all the circumstances of the case may be just. The elements
 22 of these damages may include only the following:

- 23 (1) loss of consortium by the surviving spouse;
 24 (2) pecuniary loss of comfort and society of the
 25 decedent, grief, and emotional distress suffered by:

- 1 (a) (i) the surviving spouse; and
 2 (ii) the decedent's child or parent who resided with
 3 the decedent at the time of death and to whose support the
 4 decedent contributed;
 5 (b) if there is no surviving person described in
 6 subsection (2)(a), a child of the decedent who was not
 7 living with and supported in whole or in part by the
 8 decedent at the time of death;
 9 (c) if there is no surviving person described in
 10 subsection (2)(a) or (2)(b), a parent of the decedent who
 11 was not living with and supported in whole or in part by the
 12 decedent at the time of death;
 13 (d) if there is no surviving person described in
 14 subsection (2)(a), (2)(b), or (2)(c), a brother or sister of
 15 the decedent and any child or grandchild of any deceased
 16 brother or sister of the decedent; or
 17 (e) if there is no surviving person described in
 18 subsections (2)(a) through (2)(d), other next of kin of the
 19 decedent;
 20 (3) reasonable value of the contributions in money
 21 that the decedent would reasonably have made for the
 22 support, education, training, and care of the surviving
 23 family members during the respective life expectancies of
 24 the decedent and the survivors;
 25 (4) medical and funeral expenses incurred as a result

1 of the injury and death; and

2 (5) reasonable compensation for the decedent's pain
3 and suffering before his death."

4 Section 2. Section 27-1-501, MCA, is amended to read:

5 "27-1-501. Survival of cause of action or defense --
6 death or disability or transfer of interest. (1) An Except
7 as provided in subsection (2), an action, cause of action,
8 or defense does not abate because of the death or disability
9 of a party or the transfer of any interest therein, but
10 whenever the cause of action or defense arose in favor of
11 such party prior to his death or disability or transfer of
12 interest therein, it survives and may be maintained by his
13 representatives or successors in interest. If the action has
14 not been begun or defense interposed, the action may be
15 begun or defense interposed in the name of his
16 representatives or successors in interest. If the action
17 has been begun or defense interposed, the action or
18 proceeding may be continued as provided in Rule 25,
19 M.R.Civ.P.

20 (2) No action may be brought under this section if an
21 action may be brought under 27-1-513."

22 Section 3. Section 27-1-512, MCA, is amended to read:

23 "27-1-512. Action by parent or guardian for injury to
24 or--death--of child or ward. Either parent may maintain an
25 action for the injury or-death-of to a minor child and a

1 guardian for injury or-death-of to a ward when such injury
2 or-death is caused by the wrongful act or neglect of
3 another. Such action may be maintained against the person
4 causing the injury or-death or, if such person be employed
5 by another person who is responsible for his conduct, also
6 against such other person."

7 Section 4. Section 27-1-513, MCA, is amended to read:

8 "27-1-513. Action for wrongful death of-adult. (1)
9 When injuries to and the death of one person,--not--being--a
10 minor,--is are caused by the wrongful act or neglect of
11 another, his--heirs---or the personal representatives
12 representative of the decedent's estate may maintain an
13 action for damages against the person causing the death or,
14 if such person be employed by another person who is
15 responsible for his conduct, then also against such other
16 person. There may be only one legal action for the injuries
17 to and death of the decedent.

18 (2) Damages received in a suit under this section must
19 be distributed through the probate court in accordance with
20 probate law."

21 NEW SECTION. Section 5. Applicability. This act
22 applies to causes of action arising after the effective date
23 of this act.

24 NEW SECTION. Section 6. Effective date. This act is
25 effective on passage and approval.

-End-

-4-

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) JUDICIARYPAGE NBR..... 202
RUN TIME08:32
RUN DATE.... 04/22/87CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0306	2/06	2/16		DO PASS		2/16
MAZUREK, JOSEPH P.			REQUIRE PARDONS BOARD TO MEET MONTHLY AT STATE PRISON			
SB0311	2/10	2/16		TABLED		-
HOFMAN, SAM			LIMIT CHALLENGES TO LOCAL INITIATIVES		tabled 2/18	
SB0338	2/14	2/17		PASS AS AMENDED		2/20
BOYLAN, PAUL F.			REGULATE TESTS OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES			
SB0356	2/17	2/19		PASS AS AMENDED		2/19
KOLSTAD, ALLEN C.			ESTABLISH MINIMUM OFFICEHOLDING AND TRAINING REQUIREMENTS FOR CORONERS			
SB0361	2/18	2/19		PASS AS AMENDED		2/20
HALLIGAN, MIKE			REVISE YOUTH COURT ACT			
SB0363	2/18	2/20		PASS AS AMENDED		2/20
JACOBSON, JUDY H.			SET MINIMUM GARNISHABLE AMOUNT UNDER CHILD SUPPORT INCOME DEDUCTION ACT			
SB0375	2/18	2/20		PASS AS AMENDED		2/20
BISHOP, AL			REVISE WRONGFUL DEATH ACTIONS			
SB0379	2/19	2/20		PASS AS AMENDED		2/20
YELLOWTAIL JR, WILLIAM P.			ALLOW IRRIGATION DISTRICTS TO CONTRACT WITH THE STATE FOR A LOAN OF MONEY			
SB0380	2/19	2/20		DO PASS		2/20
PINSONEAULT, R.J. (DICK)			CLARIFY LAW OF PRODUCTS LIABILITY			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 20, 1987

The thirty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 20, 1987 by Vice Chairman Bruce Crippen in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION ON SB 375: Senator Al Bishop of Billings introduced SB 375 on Wrongful Discharge, which was a committee requested bill from the Judiciary Committee. He explained that Keith Keller, Helena lawyer, will explain the bill.

PROPOSERS: Keith Keller, Helena, said the bill will not effect insurance rates. He said when a person dies in an accident, his heirs have a wrongful death action for the damages of losing what they might have gotten from the dead person. He said if the person survives for a while after an accident, there is an action called the survival action. He said the combination of these two actions have caused the problems, because the two action belong to two separate groups: the wrongful death action belongs to the heirs, and the survival action belongs to the estate of the person that might die. He said the damages overlap. He stated in the survival action the estate is entitled to the deceased's lost of earnings. He said what happens is multiple suits will come about if the person is surviving after the accident. He said a probate court and another court control these cases. He said the bill will combined the separate claims of wrongful death actions and survival actions into one. He said there can be only one law suit with this bill. He said the bill also makes the law suit be brought forward by a personal representative. He stated that at the present time the survival action must be brought forward by a personal representative, but the wrongful death action can be brought forward by the heirs. He explained the bill sets out the elements of damages that can be recovered in such action and eliminates the possibility of multiple recovery. He pointed out the bill takes the damages that are recoverable in the wrongful death action and combines those as they have been set out by the Montana Supreme Court. He said the bill also say the disposition of money must be controled by the probate court. He said at the current time the court that would handle the the wrongful death case would handle the disposition of the money under the wrongful death action. He said a probate court usually handles the survival action money. He stated this way one court will handle the money.

Jim Robischon, Montana Liability Coalition, supported the bill.

OPPONENTS: Karl Englund, Montana Trial Lawyers Association, said if the purpose of the bill is not to allow "double recovery" when the two actions are combined, then he would agree to it. He said the bill on page 2 substantially limits the people that can recover. He said children that are not dependent to the deceased can not recover. He stated the bill eliminates the damages to compensate the estate for lost of enjoyment of life in the survival action. He commented that the bill needs a few amendments.

John Hoyt, Great Falls, commented that it is unfair for attorney to bring one case of wrongful death into one court and then bring another type of survival action in another court. He agreed with the combination of these two. He said the unworkable parts of the bill are having to still have two courts and two judges. He said the bill only needs the "joinder".

CONSIDERATION OF SB 363: Senator Judy Jacobson of Butte introduced SB 363 to the committee and stated that the stricken language on page 1 should be put back in because it is an "either or" situation. She explained the bill sets a minimum amount that can be deducted for child support. She pointed out in some cases the deduction is so high that it makes more sense to quit work than pay.

PROPOSERS: Noel Larrivee, attorney in Missoula echoed Senator Jacobson's statement about putting the stricken language back in. He said it gives flexibility to the court because it gives two methods, which are the amount necessary to pay current child support, or any delinquent amount. He said the delinquent amount that can be paid off in a two-year period or the minimum amount of 25 percent disposable earnings up to the maximum allowed by federal garnishment law. He explained that amount would be 55 percent. He stated the problem is the judge is confronted with a person who applies through the court with a large delinquent amount and the judge has to impose the maximum amount of federal garnishment law. He explained on page 1, line 13, if its subparts (i) and (ii) do not apply, then the court must authorize the deduction of 55 percent. He said this causes delinquent fathers confronted with giving 55 percent of their earnings to child support, to quit work. He pointed out the judge can not give any less of a deduction because of the present, written statute.

DISCUSSION ON SB 363: Senator Halligan asked if the 25 percent in the bill came from new federal regulations. Mr. Larrivee replied it is consistent with that. Senator Halligan asked if it applies to just the department in terms of its administrative enforcement of the act or county attorneys as well. Mr. Larrivee answered it would apply to parties bringing an action under the Income Deduction Act.

Judiciary Committee
Minutes of the meeting
February 20, 1987 10:00 a.m.
page 3

ACTION ON SB 363: Senator Crippen called for a motion on the bill. Senator Halligan moved on page 1, lines 13 through 20 and lines 22 through 23 to reinsert the stricken language. The motion carried unanimously. Senator Halligan moved the bill AS AMENDED DO PASS. The motion carried unanimously.

DISCUSSION ON SB 375: Senator Halligan inquired if Mr. Robischon wanted to go beyond combining the two actions. Mr. Robischon said the bill sets out who would be entitled to recover and who would give the recovery, but there is more to be done. Senator Halligan asked who's idea was it to limit the action to be brought forward by a personal representative. Mr. Keller replied that they wanted to limit the bill to certain people because that is one of the bigger messes right now, because so many people try to get in on these cases. Mr. Keller suggested striking all new material in section 1 of the bill and all the new material in subsection 2 of section 4. He said this would please Mr. Hoyt.

Senator Crippen asked Karl Englund if he would agree to striking these sections. Mr. Englund said in addition to that there should be rewording on page 3, line 20, to fit in no "double recovery". Senator Crippen asked what Mr. Keller thought about that. He agreed.

Senator Crippen asked the lawyers to get together and work out language for this bill.

Senator Bishop closed.

CONSIDERATION OF SB 379: Senator Yellowtail of Wyola introduced SB 379, which gives irrigation districts authority to seek loans from the state. He said in order to seek loan, they have to get the loans just for improving irrigation systems.

PROPONENTS: Jo Brunner, Montana Water Development Association, favored the bill because the districts would like to enter into contracts with the state. She explained each section of the bill.

Ken Kelly, Montana Water Development Association, supported the bill (see witness sheet).

Ron Schofield, Helena Valley Irrigation Districts, stated the bill allows the districts to look at another avenue of funding because the federal money is gone and probably will not never be returned.

OPPONENTS: None

DISCUSSION ON SB 379: Senator Blaylock questioned where the state money will come from. Ms. Brunner did not know. Mr. Schofield felt it will

ACTION ON SB 375: The two sides could not agree on a compromise. Mr. Keller suggested deleting all new material in section 1. Mr. Englund objected because he wanted to make sure there was no double recovery. Mr. Keller said that was the only objection he had with Karl's idea. Mr. Englund said his language would be in section 2's place. Senator Mazurek asked if it is clear what double recovery means. Mr. Englund said one can't recover for the same elements of damage in the same case. Senator Halligan asked why the first section material has to be stricken. Mr. Keller said the existence of the survival statute, which is necessary for all other kind of law suits, has resulted in a separate claim for death. He said that is the purpose for subsection 2 of this bill is to eliminate a survival action when there is a death. Mr. Englund said section 1 limits who can bring forth a wrongful death action. Senator Mazurek asked about a frequently visiting father. Mr. Hoyt said there are some cultures, like the Native American culture, where the grandparents take care of the children. He said this law will eliminate that kind of life because those children will not be able to recover. Senator Halligan can't understand under a public policy that a child living independent from a family can't recover. Mr. Keller said in subsection 2 all the probate code language could be eliminated. Senator Mazurek asked if it would be alright to say just surviving spouse and heirs. Mr. Englund said under the probate code heir means somebody that is entitled to the property of the deceased. Senator Mazurek asked if surviving spouse and other family members would be better. Mr. Hoyt inquired why the bill can't join the two actions and just say not to have any double recovery. Senator Mazurek read from a case called Swanson vs Champion International. He said the case wanted a joiner. Senator Mazurek asked if the bill allows punitive damages. Mr. Keller said punitive damages are not awarded for a death, there has to be some damage about the death to cause that. Senator Halligan moved to combine the two actions and prevent double recovery. Senator Crippen made a substitute motion to delete the language on page 1, line 21 to page 3, line 3. He also included in his motion to delete the language on page 4, lines 16 through 20. The motion carried. Senator Halligan withdrew his motion.

Senator Mazurek said something has to be done with (2) on page 3; it has to remain like it is or adopt the other proposal to bring the two actions together and state there can be no double recovery. Senator Halligan moved to strike (2) and say that one couldn't recover the same damages twice. Valencia said she would work on the technical language for this motion. Senator Halligan included in his motion to delete the language on page 3, lines 6 and 7. The motion CARRIED. Senator Bishop moved the bill DO PASS AS AMENDED. The motion CARRIED.

ACTION ON SB 379: Senator Yellowtail presented amendments to the committee, which the interested groups worked out in the back of the room (see Standing Committee Report). He stated that the bill will specifically

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 20th
10:00 am

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE Feb. 20

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

STANDING COMMITTEE REPORT

February 20

37

19.....

MR. PRESIDENT

We, your committee on..... **SENATE JUDICIARY**

having had under consideration..... **SENATE BILL** No. **375**

first reading copy (white)
color

Revise wrongful death actions.

Respectfully report as follows: That..... **SENATE BILL** No. **375**

BE AMENDED AS FOLLOWS:

1. Title, lines 9 and 10.

Following: "ANOTHER;" on line 9

Strike: the remainder of line 9 through "DEATH;" on line 10

2. Title, lines 12 and 13.

Following: "ESTATE;" on line 12

Strike: the remainder of line 12 through "ACTIONS" on line 13

Insert: "PROVIDING THAT DAMAGES MAY BE RECOVERED ONLY ONCE"

3. Page 1, line 21 through page 3, line 3.

Following: "just." on line 21

Strike: the remainder of line 21 through "death." on page 3, line 3

4. Page 3, lines 6 and 7.

Following: "An" on line 6

Strike: the remainder of line 6 through "an" on line 7

Insert: "An"

5. Page 3, lines 20 and 21.

Strike: subsection (2) in its entirety

Insert: "(2) Actions brought under this section and 27-1-513 must be combined in one legal action and any element of damages may be recovered only once."

~~DO PASS~~

BE CONTINUED

~~DO NOT PASS~~

Senator Mazurek

Chairman.

Senate Judiciary

SB 375

Page 2

..... 19.....

6. Page 4, line 8.

Strike: "(1)"

7. Page 4, lines 15 through 20.

Following: "person." on line 16

Strike: the remainder of line 15 through "law." on line 20

7051d/L:JEA/WP:jj

AND AS AMENDED

DO PASS

.....
Senator Mazurek

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
258		3/16/87						3/23/87			
261		3/17/87								3/18/87	
275		3/17/87								3/27/87	
286		3/19/87								3/27/87	
289		3/17/87						3/23/87			
303		3/17/87								3/25/87	
306		3/17/87						3/17/87			
338		3/18/87								3/24/87	
361		3/18/87								3/23/87	
363		3/18/87								3/27/87	
372		3/19/87									3/27/87
375		3/19/87								3/26/87	
380		3/19/87								3/26/87	

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

SENATE BILL NO. 375

INTRODUCED BY BISHOP

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CIVIL ACTIONS FOR THE WRONGFUL DEATH OF ANOTHER; REQUIRING THE JOINDER OF CIVIL ACTIONS FOR INJURIES TO AND DEATH OF A PERSON CAUSED BY THE WRONGFUL CONDUCT OF ANOTHER; PROVIDING--THAT--THERE--MAY--BE--ONLY--ONE--LEGAL--ACTION FOR--SUCH--INJURIES--AND--DEATH; PROVIDING THAT SUCH AN ACTION MAY BE BROUGHT ONLY BY THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE; ESTABLISHING--THE--COMPENSABLE--ELEMENTS--IN SUCH--ACTIONS PROVIDING THAT DAMAGES MAY BE RECOVERED ONLY ONCE; AMENDING SECTIONS 27-1-323, 27-1-501, 27-1-512, AND 27-1-513, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-323, MCA, is amended to read:

"27-1-323. Wrongful death. In every action under 27-1-512 and 27-1-513, such damages may be given as under all the circumstances of the case may be just. The elements of these damages may include only the following:

{1}--loss-of-consortium-by-the-surviving-spouse;

{2}--pecuniary-loss--of--comfort--and--society--of--the

decedent; grief; and emotional distress suffered by;

{a}--{1}--the-surviving-spouse; and

{1}--the-decedent's--child--or--parent--who--resided--with the-decedent-at-the-time-of-death-and-to-whose--support--the decedent-contributed;

{b}--if--there--is--no--surviving--person--described--in subsection--{2}{a},--a-child--of--the--decedent--who--was--not living--with--and--supported--in--whole--or--in--part--by--the decedent-at-the-time-of-death;

{c}--if--there--is--no--surviving--person--described--in subsection--{2}{a}--or--{2}{b},--a-parent-of-the-decedent-who was-not-living-with-and-supported-in-whole-or-in-part-by-the decedent-at-the-time-of-death;

{d}--if--there--is--no--surviving--person--described--in subsection--{2}{a},--{2}{b},--or--{2}{c},--a-brother-or-sister-of the--decedent--and--any--child--or--grandchild--of--any--deceased brother-or-sister-of-the-decedent; or

{e}--if--there--is--no--surviving--person--described--in subsections--{2}{a}--through--{2}{d},--other-next-of-kin-of-the decedent;

{3}--reasonable-value-of--the--contributions--in--money that--the--decedent--would--reasonably--have--made--for--the support, education, training, and care--of--the--surviving family--members--during--the--respective--life-expectancies--of the-decedent-and-the-survivors;

~~{4}--medical-and-funeral-expenses-incurred-as-a--result
of-the-injury-and-death,-and
{5}--reasonable--compensation--for--the-decedent's-pain
and-suffering-before-his-death,-"~~

Section 2. Section 27-1-501, MCA, is amended to read:

"27-1-501. Survival of cause of action or defense -- death or disability or transfer of interest. (1) An Except
~~as--provided--in--subsection--{2}--an~~ AN action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, it survives and may be maintained by his representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of his representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

~~{2}--No--action-may-be-brought-under-this-section-if-an
action-may-be-brought-under-27-1-513,-~~

(2) ACTIONS BROUGHT UNDER THIS SECTION AND 27-1-513
MUST BE COMBINED IN ONE LEGAL ACTION AND ANY ELEMENT OF
DAMAGES MAY BE RECOVERED ONLY ONCE."

Section 3. Section 27-1-512, MCA, is amended to read:

"27-1-512. Action by parent or guardian for injury to or death of child or ward. Either parent may maintain an action for the injury or death of to a minor child and a guardian for injury or death of to a ward when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death or, if such person be employed by another person who is responsible for his conduct, also against such other person."

Section 4. Section 27-1-513, MCA, is amended to read:

"27-1-513. Action for wrongful death of--adult. ~~{1}~~
When injuries to and the death of one person, ~~not-being-a
minor,-is~~ are caused by the wrongful act or neglect of another, ~~his---heirs---~~ or the personal representatives representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his conduct, then also against such other person. There may be only one legal action for the injuries to and death of the decedent,-

~~{2}--Damages-received-in-a-suit-under-this-section-must
be-distributed-through-the-probate-court-in-accordance-with
probate-law,-"~~

NEW SECTION. Section 5. Applicability. This act

1 applies to causes of action arising after the effective date
2 of this act.

3 NEW SECTION. Section 6. Effective date. This act is
4 effective on passage and approval.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 19, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 19, 1987, at 8:00 a.m. in Room 312D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Addy who was excused.

EXECUTIVE SESSION:

ACTION OF SENATE BILL NO. 49:

Rep. Brown moved that SB #49 Be Concurred In. Rep. Cobb moved the subcommittee amendments. Rep. Rapp-Svrcek pointed out that the amendments were not unanimously passed by the subcommittee. Rep. Gould asked Rep. Cobb what can be done about people who are not 501 (c) tax status. Rep. Cobb stated that if those people are to be protected, amendment number 3 must be stricken, and they must file as a nonprofit organization with the state to be exempted. Rep. Gould acknowledged that he would like to segregate amendment number 3. Rep. Cobb pointed out that amendments number 1, 2, and 4 could be voted on and he moved those. Question was called and a voice vote was taken. The motion CARRIED 15-1 with Rep. Rapp-Svrcek dissenting. Rep. Brown moved that SB #49, Be Concurred In As Amended. Rep. Rapp-Svrcek moved amendment number 3, because he stated that it is an important amendment. (See Subcommittee Amendment No. 3 Attached-Exhibit A). Rep. Giacometto opposed the amendment because he pointed out that the people who fall under the Montana Corporation Act are the same people who fall under the 501 (c) and just have not filed. Rep. Miles explained that the filing of 501 (c) is not a problem to do and any nonprofit corporation should be doing this filing. She stated that those who do not file under the Montana NonProfit Corporation Act can cause a potential for abuse and this is in keeping with this act. We want to exempt officers and directors of nonprofit corporations. Rep. Giacometto stated that Montana does have a law and a standard, to clarify what a nonprofit corporation is and if it is regulated properly it will work. Question was called and a voice vote was taken. The motion FAILED 13-3. Amendment number 3 has been stricken. Rep. Mercer moved that §3 be stricken in its entirety. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Question was called on the bill to Be

language that reads, "a work order is notification to the manufacturer and the dealer is an agent of the manufacturer" be stricken.

H. THOMAS SCHWERTFEGER, Regional Manager, State Government Relations, Ford Corporation, supported returning to the original language of the current lemon law. He submitted a letter as an exhibit that the present law works well. (Exhibit A).

Tom Harrison, Montana Auto Dealers Association, recommended that the notice portion of the bill be eliminated. Section 6, creates a whole new area of tort. He urged it be not concurred in recommendation.

There were no further opponents.

QUESTIONS (or Discussion) ON SENATE BILL NO. 372:

Rep. Rapp-Svrcek asked Mr. Sherbert what the relationship is to GMC of a dealer. He stated that the dealer is an independent businessman who is franchised.

Senator Pinsoneault closed the hearing on Sb #372.

SENATE BILL NO. 375, Senator Bishop, District No. 46, pointed out that this act generally revises the laws relating to civil actions for the wrongful death of another. He stated that on page 3, lines 23-25, a substitute change takes place in regard to damages only being recovered once.

PROPOSERS:

Karl England, Montana Trial Lawyers Association, supported the bill as is. He stated that he feels there may be some very good policy reasons why a double recovery would be appropriate but there is a good compromise situation in this bill where there can not be two causes of action, there can only be one. So, a single recovery is a significant change from the current law but one that the Association feels is reasonable, responsible and a good compromise.

There were no further proponents testifying. (See Visitors' Register Attached).

There were no opponents.

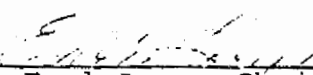
JUDICIARY COMMITTEE

March 19, 1987

Page 12

Senator Bishop closed the hearing on SB #375

ADJOURNMENT: There being no further business before the Committee, the meeting was adjourned at 12:48 p.m.



Rep. Earl Lory, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)		✓	✓
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 26, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 26, 1987, at 9:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Cobb who was excused.

EXECUTIVE ACTION:

ACTION ON SENATE BILL NO. 229:

Rep. Miles moved that SB 229 be taken off the table and reconsidered. She stated she supported a motion to discuss the bill because SRS was not being properly funded. There are people who need to be placed in services for the developmentally disabled and she felt a little more time was needed on the bill in discussion. Rep. Mercer asked Rep. Miles if she had changed her vote or did she want to just discuss the bill. She stated that she votes to move the bill out of committee. Question was called and a voice vote was taken. The motion CARRIED 10-7. Rep. Rapp-Svrcek moved SB 229, BE CONCURRED IN. He stated he felt that discussion was needed so the system was not abused especially for people who have been on the waiting list for a time. Rep. Addy explained that he opposed the bill because it was the executive branch coming to the legislative branch and asking them to tell the judicial branch they could no longer interfere in the actions of the executive branch even though the legal rights of the individuals who are involved in executive branch actions are directly effected. That is a violation and separation of powers and it is a usurpation of power by this branch and a perversion of what the total system of government was suppose to be by the executive branch. Rep. Rapp-Svrcek asked Rep. Addy what about the rights of the people who were waiting to be placed that were being used up by those who could afford to go into court and press their cases. Rep. Addy stated that was the opposite of what they had in the bill. SB 229 has the legislature stepping in where they should not. He also stated that SRS should be adequately funded so there were placements for DD people. The judicial branch must place an individual where they felt his rights are protected. Rep. Gould explained that SRS was doing a good job and SB 229 was an important bill. He stated Montana is a model state and SRS is doing a

the word "department" to page 6, on line 5. A voice vote was taken and the motion CARRIED unanimously. Discussion continued with Rep. Mercer stating that this was a bill dealing with snowmobilers. Anytime the department is operating property under an agreement, then they are not making any guarantees that it is safe except to the extent of gross negligence. He stated he felt this was beyond the title of the bill. Rep. Mercer moved to amend page 6, line 2, inserting snowmobiling. (See amendments attached). Rep. Giacometto asked that clarification be made in regard to other outdoor activities. Rep. Mercer stated it is his understanding that if they own the land or lease the land, they are already covered. If they enter into an agreement to take care of the land which is not really a lease, then, they also want the comfort of this protection. This bill is an act to affect snowmobilers and does not have anything to do with other activities and there are other people who might have other concerns and that bothered him. Rep. Addy favored the motion. When there is a problem with the title being beyond the scope of the title, it is better to narrow the scope of the bill than to expand it, he said. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Grady moved that SB 139 BE CONCURRED IN AS AMENDED. Question was called on the bill. A voice vote was taken and the motion CARRIED unanimously. SB 139 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 375: Rep. Addy moved the amendments of the subcommittee, on page 5, lines 3 and 4. (See amendments attached). Rep. Addy moved that SB 375 BE CONCURRED IN AS AMENDED. Rep. Gould asked Rep. Addy what exactly is happening on this. Rep. Addy asked Mr. Karl England to explain wrongful death. He explained that currently, when there is a death and a tort case, there is a possibility of bringing two cases to court, but in separate cases. One for the wrongful death of the person and one on behalf of the survivor of the person, and, there is a possibility of at least one area of damages where you can collect damages for the same thing in both cases. This bill says, when there is a death, the two cases have to be combined and you can only collect each measure of damages possible. Rep. Eudaily questioned Rep. Addy about taking the word "immediate" out of the title. Rep. Addy stated that was exactly correct. Rep. Addy also moved that amendment. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 375 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 380: Rep. Addy moved the amendments of the subcommittee. He explained the amendments stating that the amendments go from an implied negligence theory to an actual notice theory. (See amendments

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 26, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)			✓
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

HOUSE

MARCH 26,

19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 375

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached



Chairman

1. Title, line 16.

Strike: "IMMEDIATE"

2. Page 5, lines 1 and 2.

Strike: "the effective date of this act"

Insert: "July 1, 1987"

3. Page 5, line 4.

Strike: "on passage and approval"

Insert: "July 1, 1987"


THIRD reading copy (BLUE)
color

REP. MERCER WILL CARRY THE BILL!

SENATE BILL NO. 375

INTRODUCED BY BISHOP

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CIVIL ACTIONS FOR THE WRONGFUL DEATH OF ANOTHER; REQUIRING THE JOINDER OF CIVIL ACTIONS FOR INJURIES TO AND DEATH OF A PERSON CAUSED BY THE WRONGFUL CONDUCT OF ANOTHER; PROVIDING--THAT--THERE--MAY--BE--ONLY--ONE--LEGAL--ACTION FOR--SUCH--INJURIES--AND--DEATH; PROVIDING THAT SUCH AN ACTION MAY BE BROUGHT ONLY BY THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE; ESTABLISHING--THE--COMPENSABLE--ELEMENTS--IN SUCH--ACTIONS PROVIDING THAT DAMAGES MAY BE RECOVERED ONLY ONCE; AMENDING SECTIONS 27-1-323, 27-1-501, 27-1-512, AND 27-1-513, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-323, MCA, is amended to read:

"27-1-323. Wrongful death. In every action under 27-1-512 and 27-1-513, such damages may be given as under all the circumstances of the case may be just. The elements of these damages may include only the following:

(i)--loss of consortium by the surviving spouse;

(2)--pecuniary loss of comfort and society of the

decedent, grief, and emotional distress suffered by;

(a)--(i) the surviving spouse; and

(ii) the decedent's child or parent who resided with

the decedent at the time of death and to whose support the

decedent contributed;

(b)--if there is no surviving person described in

subsection (2)(a), a child of the decedent who was not

living with and supported in whole or in part by the

decedent at the time of death;

(c)--if there is no surviving person described in

subsection (2)(a) or (2)(b), a parent of the decedent who

was not living with and supported in whole or in part by the

decedent at the time of death;

(d)--if there is no surviving person described in

subsection (2)(a), (2)(b), or (2)(c), a brother or sister of

the decedent and any child or grandchild of any deceased

brother or sister of the decedent; or

(e)--if there is no surviving person described in

subsections (2)(a) through (2)(d), other next of kin of the

decedent;

(3)--reasonable value of the contributions in money

that the decedent would reasonably have made for the

support, education, training, and care of the surviving

family members during the respective life expectancies of

the decedent and the survivors;

~~{4}--medical-and-funeral-expenses-incurred-as-a--result
of-the-injury-and-death--and~~

~~{5}--reasonable--compensation--for--the-decedent's-pain
and-suffering-before-his-death--"~~

Section 2. Section 27-1-501, MCA, is amended to read:

"27-1-501. Survival of cause of action or defense -- death or disability or transfer of interest. (1) An Except as--provided--in--subsection--{2},--an AN action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, it survives and may be maintained by his representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of his representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

~~{2}--No--action--may--be--brought--under--this--section--if--an
action--may--be--brought--under--27-1-513--~~

(2) ACTIONS BROUGHT UNDER THIS SECTION AND 27-1-513
MUST BE COMBINED IN ONE LEGAL ACTION AND ANY ELEMENT OF
DAMAGES MAY BE RECOVERED ONLY ONCE."

Section 3. Section 27-1-512, MCA, is amended to read:

"27-1-512. Action by parent or guardian for injury to or death of child or ward. Either parent may maintain an action for the injury or death of to a minor child and a guardian for injury or death of to a ward when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death or, if such person be employed by another person who is responsible for his conduct, also against such other person."

Section 4. Section 27-1-513, MCA, is amended to read:

"27-1-513. Action for wrongful death of--adult. {1} When injuries to and the death of one person, ~~not-being-a~~ minor, is are caused by the wrongful act or neglect of another, ~~his---heirs---~~ or the personal representatives representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his conduct, then also against such other person. ~~There may be only one legal action for the injuries to-and-death-of-the-decedent.~~

~~{2}--Damages-received-in-a-suit-under-this-section-must
be-distributed-through-the-probate-court-in-accordance--with
probate-law--"~~

NEW SECTION. Section 5. Applicability. This act

1 applies to causes of action arising after ~~the effective date~~
2 ~~of this act~~ JULY 1, 1987.
3 NEW SECTION. Section 6. Effective date. This act is
4 effective ~~on passage and approval~~ JULY 1, 1987.

-End-